IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENWOOD DIVISION

Darrell Williams, # 219730, Petitioner, v. Anthony J. Padula, Warden Lee Correction Institution, Respondent.	)	C/A NO. 8:10-2688-CMC-BHH **OPINION and ORDER**

This matter is before the court on Petitioner's *pro se* Motion to Alter or Amend Judgment Under Federal Rule Civil Procedure 59(e). Dkt. # 20 (filed Dec. 16, 2010). Petitioner argues that his petition and objections raise a legal argument which this court failed to properly consider. For the reasons noted below, the court grants in part and denies in part Petitioner's motion to reconsider.

Petitioner argues that the issue raised in his objections was misconstrued by this court. Petitioner contends that *Custis v. United States*, 511 U.S. 485 (1994), and other Supreme Court precedent provide an avenue for him to challenge prior state court convictions used to enhance the state court sentence he is now serving, and (accordingly) he should not be required to seek permission to file a second or successive petition under 28 U.S.C. § 2244(b)(3)(A), as to do so would "close a door that the United States Supreme Court has not." Mot. at 6.

Petitioner's argument is precluded by the Supreme Court's decision in *Lachawanna County District Attorney v. Coss*, 532 U.S. 394 (2001). In *Coss*, the Court held that

> once a state conviction is no longer open to direct or collateral attack in its own right because the defendant failed to pursue those remedies while they were available (or because the defendant did so unsuccessfully), the conviction may be regarded as

> conclusively valid. If that conviction is later used to enhance a criminal sentence, the defendant generally may not challenge the enhanced sentence through a petition under § 2254 on the ground that the prior conviction was unconstitutionally obtained.

532 U.S. at 403-04 (citation omitted). The exception noted by the Court is "that the prior conviction used to enhance the sentence was obtained where there was a failure to appoint counsel in violation of the Sixth Amendment, as set forth in *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963)." *Coss*, 532 U.S. at 404.

Such was not the case here, as Petitioner argues that his counsel was ineffective in 1995 in failing to advise him of the potential collateral effects of his convictions. *See* Pet. at 9-10 (Dkt. # 1, filed Oct. 20, 2010).

Therefore, to the extent necessary to include the above discussion, Petitioner's motion for reconsideration is granted. In all other respects, the motion is denied, and the Petition is dismissed without prejudice and without service of process as this court is without jurisdiction to entertain it. 28 U.S.C. § 2244(b)(4).

CERTIFICATE OF APPEALABILITY

The governing law provides that:

> (c)(2) A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.
>
> (c)(3) The certificate of appealability . . . shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c). A prisoner satisfies this standard by demonstrating that reasonable jurists would find this court's assessment of his constitutional claims is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. *See Miller-El v. Cockrell,*

537 U.S. 322, 336 (2003); *Slack v. McDaniel,* 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001). In this case, the legal standard for the issuance of a certificate of appealability has not been met. Therefore, Petitioner's motion for a certificate of appealability (Dkt. # 14, filed Nov 29, 2010) is **denied**.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
December 29, 2010

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